

CONDITIONAL PETITION FOR EXTENSION OF TIME

If entry and consideration of the amendments above requires an extension of time, Applicants respectfully request that this be considered a petition therefor. The Commissioner is authorized to charge any fee(s) due in this connection to Deposit Account No. 14-1263.

ADDITIONAL FEE

Please charge any insufficiency of fees, or credit any excess, to Deposit Account No. 14-1263.

REMARKS

Applicants respectfully request reconsideration and allowance of this application in view of the amendments above and the following comments.

The original claims have been replaced by a new set of claims. The claims have been limited to a combination of original claims 3 (glycerol stearate citrate) and 4 (cetylstearyl alcohol), and are supported by the instant examples.

For the Examiner's convenience, Applicants point out that the new claims correspond to the previous claims as follows:

<u>New Claim</u>	<u>Previous Claim</u>
9	1 + 3 + 4
10	1 + 3 + 4 + 7

11	2 + 3 + 4
12	2 + 3 + 4 + 7
13	2 + 3 + 4
14	2 + 3 + 4 + 7

No new matter has been added.

Claims 1-8 were rejected under 35 USC §112, second paragraph, as being indefinite. In response, Applicants believe the new claims are free of all of the Examiner's concerns. Thus, the new claims are written in proper grammatical English. Also, the new claims do not recite a broad range followed by a narrower, included range. Finally, main method claim 11 recites the positive method step of incorporating the recited ingredients into the O/W emulsion.

Claim 2 was rejected under 35 USC §101 for failing to recite method steps. In response, as indicated above, new method claim 11 recites a positive method step.

Claims 1-3 and 6-8 were rejected under 35 USC §102(b) as being anticipated by FR 1,437,366. In response, Applicants point out that the new claims incorporate the substance of claim 4, which was not rejected. Accordingly, the new claims should be free of this rejection as well.

Claims 1-3 and 5-8 were rejected under 35 USC §102(b) as being anticipated by DE 3820693. In response, Applicants submit that incorporation of the substance of non-rejected

claim 4 overcomes this rejection as well.

Claims 1-3 and 5-8 were rejected under 35 USC §103(a) as being obvious over FR 1,437,366 in combination with DE 3820693. In response, Applicants submit that incorporation of the substance of non-rejected claim 4 overcomes this rejection as well.

Claims 1-8 were rejected under 35 USC §103(a) as being obvious over FR 1,437,366 or DE 3820693 alone or together in combination with U.S. 5,770,185. In response, Applicants respectfully requests that the Examiner reconsider and withdraw this rejection.

With respect to the instant method claims, these expressly require that the combination of glycerol stearate citrate and cetylstearyl alcohol be incorporated into the O/W emulsion “to reduce the stickiness of the O/W emulsion.” The Examiner concedes that neither the FR or DE references teaches cetylstearyl alcohol. The US reference teaches cetylstearyl alcohol, but concedely only as a co-emulsifier. Consequently, the combination of references does not teach or suggest that the incorporation of a combination of glycerol stearate citrate and cetylsteraryl alcohol is effective to reduce the stickiness of an O/W emulsion. Accordingly, persons skilled in the art would not, in fact, have found it obvious from the cited references to incorporate a combination of glycerol stearate citrate and cetylstearyl alcohol into an O/W emulsion for the purpose of reducing the stickiness of the O/W emulsion.

With respect to the instant formulation claims, the Examiner concludes that it would have

been obvious to substitute cetylstearyl alcohol expecting to obtain a stable emulsion. However, it is surprisingly disclosed in the specification that the combination of glycerol stearate citrate and cetylsteryl alcohol has the effect of reducing the stickiness of an O/W emulsion. As this effect is not taught or suggested by the prior art, this result is surprising and unexpected, and, therefore, an objective indication of nonobviousness.

Finally, claims 1-8 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of copending Application No. 09/581,413. In response, Applicants respectfully request that this issue be held in obedience until allowable subject matter is indicated, at which time patentable distinctness may be apparent, or Applicants may file a terminal disclaimer.

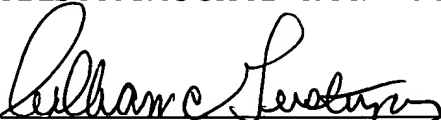
Applicants believe that the foregoing constitutes a bona fide response to all outstanding objections and rejections.

Applicants also believe that this application is in condition for immediate allowance. However, should any issue(s) of a minor nature remain, the Examiner is respectfully requested to telephone the undersigned at telephone number (212) 808-0700 so that the issue(s) might be promptly resolved.

Early and favorable action is earnestly solicited.

Respectfully submitted,

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